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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 11th November 2014

No. 8968—IR (ID)-119/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 25th September 2014 in Industrial Dispute Case No. 03 of 2012 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Cuttack Municipal Corporation, Cuttack and its workman Shri Trilochan Samal was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 03 OF 2012

Dated the 25th September 2014

Present :

Shri S. K. Sahoo, O.S.J.S., (Jr. Branch),
Presiding Officer,
Labour Court,
Bhubaneswar.

Between :

The Management of
M/s Cuttack Municipal Corporation,
Cuttack.

. . First Party—Management

And

Its workman
Shri Trilochan Samal,
At/P.O. Ghasia Sahi,
Mangalabag,
Cuttack.

. . Second Party—Workman

Appearances :

Shri R. K. Samal, Advocate	. . For the First Party—Management
Shri Susanta Dash, Advocate	. . For the Second Party—Workman

AWARD

The Government of Odisha, in the Labour & E.S.I. Department, in exercise of powers conferred upon it by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short, the Act), have referred the following dispute for adjudication by this Court vide their Letter No. 1674—IR (ID)-119/2011-LESI, dated the 1st March 2012 :

"Whether the action of M/s Cuttack Municipal Corporation, Cuttack in terminating the services of Shri Trilochan Samal, Ex Auto Van Driver with effect from the 26th January 2002 is legal and/or justified ? If not, what relief Shri Samal is entitled to ?"

2. The case of the second party in brief is that he was working as a Tempo Man-cum-Tractor Driver under the first party with effect from the 1st March 1996 on a monthly wages of Rs. 930 which was subsequently enhanced to Rs. 1,240. He alleges that all of a sudden on the 26th January 2002 he was orally intimated by the Health Officer of the first party that his services were no more required and thereby he was prevented to discharge his duty with effect from the aforesaid date. According to him, such action of the first party amounts to refusal of his employment and the same is illegal as well as unjustified due to non-compliance of the provisions of the Industrial Disputes Act, 1947. It is stated in the claim statement that when all his representations made to the Authorities did not yield any result, he raised a dispute before the labour machinery and on failure thereof the present reference has been made for adjudication of his claim. The specific stand of the second party is that when he has rendered continuous service for almost six years under the first party, he was entitled to the protection of Section 25-N, 25-G and 25-H of the Act and the first party having violated the said provisions he is entitled to reinstatement in service with full back wages, continuity of service and all consequential service benefits.

3. Refuting the stand taken in the claim statement the first party has filed its written statement wherein it is asserted that the second party was not at all appointed under the first party as a Tempo Man-cum-Tractor Driver, in as much as, at no point of time he has faced the process of selection or has got an appointment order from the Competent Authority to that effect. It is further asserted that the second party has not rendered continuous employment for more than 240 days in any calendar year and therefore, the provisions of the Act are not attracted in the present case. It is further pleaded that since the second party was illegally engaged after the cut off dated, i.e., the 19th May 1997 fixed by the Housing & Urban Development Department in their Circular No. 36051, dated the 15th December 2000, therefore, as per Section 73(B) of the Odisha Municipal Act, 1950 the procedure of disengagement prescribed under the Act was not at all necessary in respect of the second party. Lastly it is pleaded in the written statement that the second party who was a daily wager having no vested right to the post is not entitled to any relief in the present proceeding particularly when there is no vacancy in the first party organisation.

4. On the basis of the pleadings of the parties, the following issues have been framed :—

ISSUES

- (i) Whether the action of the management of M/s Cuttack Municipal Corporation, Cuttack in terminating the services of Shri Trilochan Samal, Ex Auto Van Driver with effect from the 26th January 2002 is legal and/or justified ?

(ii) If not, what relief Shri Samal is entitled to ?

5. To substantiate their respective stand while the second party has examined himself and filed documents marked Exts. 1 to 7, the first party has examined one Shri Satya Prakash Sahoo, Jr. Assistant but did not adduce any documentary evidence.

FINDINGS

6. *Issue Nos. (i) and (ii)*—In the present dispute while the second party claims that being employed under the first party he has worked continuously for a period of more than 240 days prior to his refusal of employment on the 26th January 2002 and in that connection he has proved xerox copies of the Pay Cards Ext. 2 series, the first party without disputing the aforesaid factual aspect has challenged his engagement as illegal on the ground that he was engaged after the cut off date, i.e., the 19th May 1997 without permission of the Government and therefore, as per the provisions contained in Section 73(B) of the Odisha Municipal Act, 1950 the procedure for disengagement prescribed under the Act was not relevant.

7. In view of the stand taken by the parties, it is first to be seen as to whether the second party has rendered continuous service under the first party so as to claim protection of the provisions of the Act. It is well settled that the initial burden lies on the second party to prove that he has rendered continuous service under the management. But the record discloses that despite petition filed by the second party the first party has not produced the relevant records/registers which could have shown the period of engagement of the second party. From the conduct of the first party, therefore, an inference can be drawn that had the records/registers been produced the same would have supported the stand taken by the second party. When the second party has claimed as well as deposed in his affidavit evidence with reference to Ext. 2 series that he has worked continuously for more than 240 days under the first party, the first party ought to have taken steps to disprove the same by way of adducing documentary evidence. That having not been done, this Court is constrained to draw a presumption that the second party has worked continuously under the first party for a period of more than 240 days prior to his refusal of employment on the 26th January 2002.

Admittedly, the first party has not complied with the provisions of the Act while effecting termination of the second party. However, for non-compliance of the aforesaid provisions it has taken a stand that it was not required to do so because of the provisions contained in Section 73 of the Odisha Municipal Act, 1950. For better appreciation, the relevant provision of the Municipal Act is quoted below :—

"73-B. Bar for regularisation of services—No person who is appointed on a temporary basis under sub-section (2) of Section 73 and is continuing as such at the commencement of the Odisha Municipal (Amendment) Act, 1997 shall have or shall be deemed ever to have a right to claim for regularisation of his service on any ground whatsoever and the services of such person shall be liable to be terminated at any time without any notice and without assigning any reason thereof :

Provided that in case of workmen falling within the scope of Section 25-F of the Industrial Disputes Act, 1947, one month's wages and such compensation as would be payable under the said Section shall be paid in case of termination of services."

In the case in hand this Court has already come to a conclusion that the second party having rendered continuous service for more than 240 days under the first party was entitled to the protection of Section 25-F of the Act. Since the proviso to Section 73(B) of the Municipal Act, 1950 also stipulates about compliance of the aforesaid provision while effecting termination of service of a workman, the contention laid by the first party that such compliance was not necessary is not tenable.

8. In view of the discussions made above, the action of the first party is held to be in gross violation of the provisions of the Act but the same is found to be justified on account of the policy

decision of the Government circulated vide Order No. 36051, dated the 15th December 2000 regarding which there is a mention in para. 7 of the written statement of the management and not controverted by the second party by way of filing a rejoinder to such assertion. Hence, though the action of the first party is found to be illegal for non-compliance of the provisions of the Act but the same is found to be justified.

9. In the result the question which now arises for consideration is as to what relief the second party is entitled to. In this connection, it would be appropriate to refer to a decision of the Hon'ble Apex Court in the case of Senior Superintendent, Telegraph (Traffic), Bhopal Vrs. Santosh Kumar Seal and others, reported in AIR 2010 (SC) 2140 wherein the Hon'ble Apex Court in para. 14 of the Judgment have held as follows :

"It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee."

Admittedly, the second party was not a permanent employee of the first party. The second party has admitted in his cross-examination that one Bimbadhar Swain, the then Field Officer had engaged him as a Driver in the year 1996. In absence of any documentary evidence it is difficult to presume that such engagement of the second party was made following the due procedure. He has further admitted in his cross-examination that he was being engaged by the first party during morning hours. So, keeping in view the verdict of the Hon'ble Apex Court, the status of the second party, his mode of induction into the employment and the duration of his employment, this Court is not inclined to grant the relief of reinstatement and back wages in his favour. However, his disengagement having been found to be in contravention of the provisions of the Act, he is entitled to some compensation. Taking into consideration the length of his employment under the first party a compensation of Rs. 30,000 (Rupees thirty thousand only), in my considered view, would be the just and proper relief to be awarded in favour of the second party. Accordingly, the first party is directed to pay the aforesaid compensation to the second party within a period of one month of the date of publication of the Award in the Official Gazette or else the amount of compensation would carry a simple interest of 8% per annum.

The reference is disposed of accordingly.

Dictated and corrected by me.

S. K. SAHOO
25-09-2014
Presiding Officer
Labour Court, Bhubaneswar

S. K. SAHOO
25-09-2014
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
M. NAYAK
Under-Secretary to Government
